REMARKS

Claims 68-119, 122-127, 129, and 132-137 are pending in the subject application. Favorable reconsideration in light of the amendments and remarks which follow is respectfully requested.

1. Specification

As noted in the Advisory Action, the objections to the specification have been withdrawn.

2. 35 U.S.C. §103 Rejections

Weiner and Rosenman

Claims 68-91, 93-97, 99-109, 111-119, 122-127, 129, and 132-138 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,466,233 to Weiner et al. ("Weiner") and U.S. Patent No. 6,478,776 to Rosenman et al. ("Rosenman").

The Office asserts that it would be obvious to modify Weiner's tack to provide the entire post 12 with a coil or zig-zag shape so that the device can be properly positioned and maintained in the desired location. Applicants disagree.

Applicants note that the presently disclosed coil-shaped or zig-zag shaped body members have been found to provide particular benefits in that they are capable of holding a greater volume of drug/agent per unit length of the device without having the increase the cross-section of the device (and, thus, the size of insertion). This is important because when implanted within the eye, if the length of the device becomes too long, the device can obstruct vision. The alternative way to increase the capacity of drug by increasing the width of the implant, however, is also not desirable since this results in a larger incision in the eye and potential additional discomfort. While Applicants note that the coil and zig-zag shapes can aid in preventing unwanted ejection of the device from the eye, such body members which reside within the vitreous (and, thus, fluid) of the eye are not described or believed to be capable of providing stability or an anchoring region within the vitreous.

Weiner is also directed to ocular implants. Weiner teaches that a tack 10 is provided with a central region 14 which can be configured as an anchoring region 14a that secures the tack in the retina 32, choroid 34, and/or sclera 24 to minimize movement of the tack 10 (see col. 6, lines 2-8). The head 16 of the tack 10 can optionally further be sutured to the eye. Thus, Weiner's tack is designed such that an anchoring region 14a is provided at the head area of the tack extending along dimension "e":

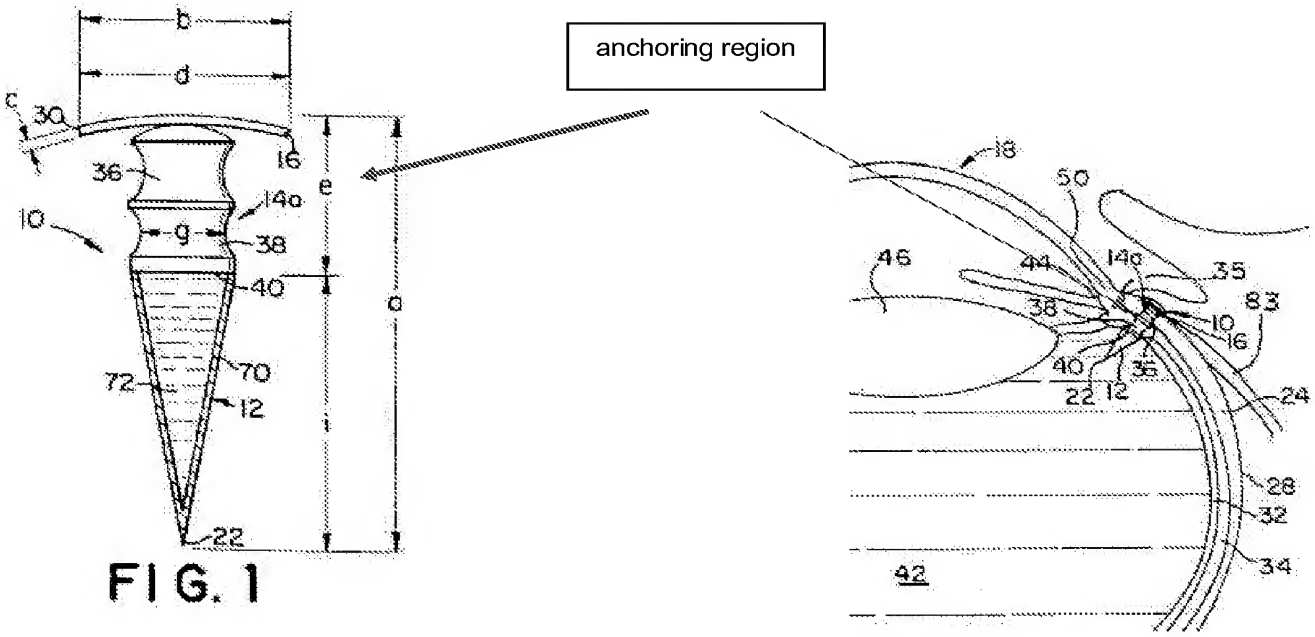

FIG. 1

As specified by Weiner, this anchoring region 14a has a length "e" that is from about 0.25-1 mm so as to correspond to the combined thickness of the retina 32, the choroid 34, and the sclera 24 (see col. 5, lines 29-34) and is designed so as to enable "the anchoring region 14a to secure the tack 10 in the eye 18 by anchoring the central portion 14 of the tack 10 to at least one of the retina 32, the choroids 34 or the sclera 24 such that suturing is optional and movement of the tack 10 within the eye 18 once the tack 10 is in position is minimized" (see col. 6, lines 2-9).

Thus, Weiner clearly describes a tack having a central portion disposed within the retina, choroids and sclera such that the central portion anchors the tack in place within solid tissue of

the eye. According to Weiner, the post 12 - which resides in vitreous fluid - is a drug depot/delivery portion of the device. Weiner does not teach or suggest that the drug depot/delivery portion of the device, which resides in vitreous fluid, could be designed to provide any type of a positioning or anchoring function. Applicants also note that Weiner designs the post 12 such that it is no greater than 7 mm to prevent obstruction of vision (see col. 6, lines 28-37). However, according to Weiner, longer length posts can be appropriate in order to accommodate larger dosages for serious ocular conditions that may threaten blindness (see col. 6, lines 33-42).

Applicants submit that there is absolutely no teaching or suggestion to modify the drug delivery post 12 of Weiner so as to anchor Weiner's implant in place. Weiner explicitly provides an anchoring region 14a which holds the tack in place in the solid tissues of the eye (retina 32, choroids 34, and/or sclera 24) such that further securing (e.g. suturing at the head of the implant) is unnecessary. While one may have possibly modified Weiner's anchoring portion 14a with another type of anchoring design (e.g. by possibly making anchoring portion 14a into a coil shape), one certainly would not have been motivated to modify Weiner's drug delivery post 12, which doesn't form a part of the anchoring region 14a and which *resides in fluid*, so as to anchor Weiner's implant in place.

The Office asserts that the "teaching of Rosenman et al can also be used to substitute one known way of anchoring a device within a patient's body with another known way of anchoring a device". Applicants disagree and respectfully submit that the Office is proposing a substitution without taking into account the material that the device is being anchored in which is critical (e.g. fluid vs. solid tissues), and further submit that substituting one known way of anchoring a device would result in substituting Rosenman's anchoring portion 14a (which is one known way of anchoring a device) with another anchoring configuration.

Accordingly, claims 68, 79, 83, 93, 99, 111, 116, and 129, and all claims dependent therefrom, are patentable over Weiner and Rosenman. Reconsideration and withdrawal of the rejections is respectfully requested.

Weiner and Rosenman and Johnson

Claims 92, 98, and 110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiner, Rosenman, and U.S. Patent No. 5,972,027 to Johnson ("Johnson"). Applicants respectfully traverse.

As set forth above, Weiner and Johnson fail to teach or suggest Applicants' devices or methods as recited in independent claims 83, 93, and 99. Johnson is cited for allegedly describing shape memory materials. However, Johnson does not remedy the above-noted deficiencies in Weiner and Rosenman.

Accordingly, claims 92, 98, and 110 (which depend from claims 83, 93, and 99) are patentable over Weiner, Rosenman, and Johnson. Reconsideration and withdrawal of the rejections is respectfully requested.

CONCLUSION

It is respectfully submitted that the subject application is in a condition for allowance. Early and favorable action is requested.

If for any reason the fee paid is inadequate or credit is owed for any excess fee paid, the Office is hereby authorized and requested to charge Deposit Account No. **04-1105**.

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Respectfully submitted,
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